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July 17, 2019

City of Milton
6738 Dixon Street
Milton, FL 32572

Re: Main Street Milton

Mr. Jorgenson,

In preparation for the July 22 meeting regarding Main Street Milton ("MSM"), I have been asked to provide an opinion regarding the Memorandum of Agreement ("MOA") between the City and MSM. This meeting was precipitated by an incident that occurred at a MSM board meeting, incidents on social media, and concerns about public records requests, all of which the City Council deemed important enough to necessitate calling a special meeting.

1. Imogene Contract. In July, the City Council became aware of an attempt to sign an agreement between MSM and the Santa Rosa Historical Society ("SRHS") related to the operation and management of the Imogene Theatre. It appears the proposed Imogene Management Agreement could run afoul of the MOA in that it authorizes purchases by MSM of items outside of the parameters set out in the MOA, and could incur financial liabilities on the part of MSM for which the City has neither contemplated or authorized use of its funds. To begin, MSM has 7 duties enumerated in the MOA:

1. Submit an annual budget request to the City of Milton by June 1 of each year that funding will be required.
2. Maintain up to date information for use by prospective new businesses on downtown demographics, traffic counts, populations, and vacant properties for lease or sale.
3. Provide quarterly reports to the CRA, through the City Manager, as to events, promotions and successful business recruitments.
4. Market current downtown businesses, promote downtown events, implement beautification programs and utilize the Main Street Four Point Approach.
5. Offer Façade Improvement Grants to assist businesses and property owners with purchasing signage and/or improving the exterior appearance of their businesses/building and thus increasing business.
6. Work with City Staff, the City Council/CRA, Santa Rosa County, the Tourism Development Council, Visit Florida and the Chamber of Commerce to recruit new business and support tourism in Milton, Florida.
7. Executive Director will work with the "Events Coordinator" and City staff to eventually assume the coordination and execution of events in the Downtown Area.

In addition to MSM's seven duties, the MOA clarifies that ownership of any materials, equipment, or items purchased by MSM, even if such property were acquired with funds from the City, would rest with MSM, as would liability.

Section 5. Property Ownership. Any materials, equipment or items purchased or acquired by Main Street Milton, Inc. with funding provided by the City of Milton belongs to Main Street Milton, Inc. which shall be solely responsible for all liabilities arising from the use of such terms or otherwise relating to such items.

This provision regarding property ownership, while enabling the use of City funds to purchase such items, is tempered by the City's first responsibility in the MOA:

Section 3. Responsibilities of the Parties. The parties hereto agree that the City of Milton will:

1. Provide funding in the amount of Twenty Thousand Dollars (\$20,000.00) to Main Street Milton in 2018 for the purpose of paying for administrative/operational expenses, maintaining a website, providing event sponsorship, maintaining insurance, required memberships for the National and Florida Main Street Programs, and recruiting and retaining businesses which will benefit the CRA and the City of Milton.

Unlike the MOA, the agreement between the SRHS and MSM contemplates the purchase, operation and maintenance of items outside the scope of the acceptable, permissible use of City funds. *See* excerpt from Section 2 of the proposed Agreement.

- a. Book Local, Regional and National Acts
Schedule and coordinate Live Theatre Performances
Provide Ticket Sales
Provide Lighting, Sound and Technological Services
Provide House Management (Front & Back)
Provide Private Rentals and Special Event Management
Provide Catering Services
Manage Sales - Concessions, Alcohol Sales, Merchandise
Provide Financial Management
Provide Administration/General Management
Oversee Facility Maintenance and Repair
Develop and manage Marketing/Advertising/Social Media/PR
- b. Select and employ all personnel necessary to service the Theatre.
- c. Select and employ all third party service providers to provide any/all of the services contemplated above.
- d. Supervise and control the purchase of all materials and supplies; and acquire, lease, dispose of and repair equipment and supplies necessary to provide safe and adequate operation of the Theatre.
- e. Manage all costs and all pricing on a customer-by-customer basis, estimate all costs on new contracts, bid on and enter into new contracts, and control all costs for contracts in progress.

Because the vast majority of funds possessed by MSM are in fact City funds, the City has a good faith basis to believe that use of its funds could be comingled with the funds necessary to operate the Imogene Theatre.

2. Public Records. In late June, the City requested the assistance of its attorney to facilitate the fulfillment of a public records request related to MSM. After clarifying the parameters with the requester, an attorney for the City contacted Cassandra Sharp, requesting a time to review documents in her possession.

The attorney for the City requested dates and times from Cassandra Sharp on:

1. July 3
2. July 3
3. July 4
4. July 5
5. July 8
6. July 9
7. July 9
8. July 9
9. July 11

Finally, the attorney received a date and time of July 16 at 2 PM. At 11:45 on July 16, counsel was informed of Ms. Sharp's sudden unavailability to review her records at the agreed upon time, forcing counsel to ask for a 10th time for a date and time to review her records.

Given the inability to provide a date and time to review public records and the general irregularities in timely compliance with sunshine requests and maintenance of records, the City has a good faith basis to believe that MSM, an agency of the City's CRA, is not using best practices to comply with Florida's Sunshine Law.

3. Ownership and Membership. The bylaws of MSM dictate that the board is made up of members and non-members, but that the board of directors is selected by the membership body of MSM. Since its renewal and partnership with the City, MSM has failed to add any members beyond its board chairperson, Cassandra Sharp. The control of the board by such a small number of people is cause for concern, and exposes MSM's board to the potential of undue influence.

It should be noted, emphatically, that the control of the board by SPECIFIC people is not necessarily cause for concern, but that control, in any circumstance, of a board, but a membership that is smaller than the board itself, can pose scenarios of imbalanced control.

Of equal concern, the failure to increase its membership, beyond one current member and four lifetime members, casts doubt on MSM's ability to reflect wide community support, a tenant of the organization. The CRA contains 66 businesses, 8 churches and 1 school within its

boundaries, it is difficult to believe that a membership of five people is sufficient to reflect the interests of these businesses and organizations.

Recommendation

Given the fact that MSM has acted in a way that would undermine the faith placed in MSM by the City, MSM's inability to comply with best sunshine practices, and the failure of MSM to grow beyond its five person membership, the City has a good faith basis to believe MSM will not fully comply with the intent of the MOA. It is the recommendation of counsel that the City strongly considers withholding additional funds to MSM in the next budget cycle or gives 30 days' notice to MSM of the City's intent to terminate the MOA.

Yours most cordially,

MOORE, HILL & WESTMORELAND, P.A.

A handwritten signature in black ink, appearing to read 'R. Alexander Andrade', written in a cursive style.

R. ALEXANDER ANDRADE

RAA/hbm
Enclosures